IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8404 of 1991

with

SPECIAL CIVIL APPLICATION No 3598 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANAV SURGON KELAVNI MANDAL

Versus

STATE OF GUJ

Appearance:

1.Special Civil Application No.8404 of 1991

MR RN SHAH for Petitioner

MS MANISHA LAVKUMR, AGP, for Respondent No. 1, 3

None present for Respondent No. 2

2.Special Civil Application No.3598 of 1992

MR RN SHAH for Petitioner

MS MANISHA LAVKUMAR, AGP, for Respondents No.1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/08/2000

ORAL JUDGEMENT

1. In both these petitions, the petitioner is common as well as the same relates to the registration of the school for which prayer has been made by the petitioner and for permission to appoint, the teachers, Jr. Clerk and Peon in the school and sanctioning of grant, the same are taken up for hearing together and are being disposed of by this common order.

2. Briefly, the facts of the case are that the petitioner- Manav Surgon Kelavni Mandal is a registered trust under the provisions of Bombay Public Trusts Act. It was registered on 12-3-1990. The trust wanted to start the secondary school at village Manpur, which is a tribal area and the said trust was in a position to get the students from the nearby areas which are also tribal areas, made an application to the Gujarat Secondary Education Board to start new secondary school in the name of Pragna Saurabh Secondary School. This application was rejected by the Board. Aggrieved of the order of the Board, the petitioner preferred an appeal before the State Government under section 31 (10) of the Gujarat Secondary Education Act, 1972. The appeal was rejected by the State Government on 25th April, 1991. The petitioner-trust moved an application for reconsideration of the said order to the State Government. In the application it has been given out that the trust is in a a position to run the school and is also in a position to get the students from the nearby area which is a tribal area and the petitioner-trust is running a Chhatralaya (Hostel) so that the students from the nearby villages can be accommodated and they can study by staying at Hostel. The State Government has accepted this application filed by the petitioner-trust in exercise of its power as conferred upon it under section 48(1) of the Act aforesaid directing the Gujarat Secondary Education Board to register the school of the petitioner from June, 1990. This order has been passed by the State Government on 12th August, 1991. The petitioner has stated in para-II of the special civil application that after this order the petitioner started the school and in the school there are 47 students and this fact has been informed to the District Education Officer, Valsad, who by order dated 26th August, 1991 also sought the particulars , of the students who are newly enrolled in the petitioner-school and studying. The petitioner states that the permission to start the school has been granted on the conditions which may be prescribed by the Gujarat

Secondary Education Board. The petitioner states that in pursuance to the order of the State Government dated 12th August, 1991, the Gujarat Secondary Education Board vide its order dated 26th September, 1991, registered the petitioner-school. The petitioner deposited the requisite amount which is to be deposited under the Act in the joint account of the petitioner-trust and the District Education officer on 1st September, 1991. After registration of the school by the Gujarat secondary Education Board in pursuance to the order of the State Government dated 12th August, 1991, the petitioner applied for grant of no objection certificate to fill up the posts of teachers, junior clerk and peon from the D.E.O. Valsad. The D.E.O., Valsad under its order dated 11-10-1991 granted N.O.C. to the petitioner for filling up the aforesaid posts in the school. Accordingly, the petitioner has given advertisement inviting applications in the newspaper. The petitioner submits that in the meantime, in spite of the fact that the petitioner school is running, the students are studying in the petitioner-school, the respondent-State under its order dated 15th November, 1991, cancelled its earlier order dated 12th August, 1991 and in the first petition, i.e. the special civil application No.8404 of 1991, the petitioner has challenged this order.

3. This special civil application was admitted by the Court on 25th November, 1991 and by way of interim relief, the operation and further implementation of the order annexure `C' was stayed.

4. After the admission of the petition and grant of interim relief by the Court in special civil application No.8404/91, the petitioner approached the D.E.O., Valsad and prayed him to give the date of interview to be held for the purpose of making selection of teachers, junior clerk and peon for which N.O.C. was granted by that Officer on 11-10-1991 and for which applications were already invited. The D.E.O., Valsad despite of having known of the fact that the order of the State Government has been stayed by this Court, insisted that when he is not a party to the proceeding aforesaid, the interim relief granted will not be binding on him. The petitioner preferred civil application No. 2539/91 in special civil application and prayer has been made therein for impleading the District Education Officer, Valsad and Gujarat Secondary Education Board, Gandhinagar as party respondents therein. That civil application was granted by the Court and the D.E.O., Valsad and Gujarat Secondary Education Board were ordered to be joined as party respondents in the special civil application

No.8404/91. Notices were issued to these two impleaded respondents. After service of notice upon the respondent No.2 of the special civil application No.8404/91, the petitioner-trust approached to the respondent No.2 for granting date to the petitioner-trust for holding the interviews for the posts for which N.O.C. was granted on 11-10-1991. The petitioner also requested to the respondent No.2 to release the grant to the petitioner as the petitioner-trust is entitled to get 100% grant for the first year and the Gujarat Secondary Education Board, Gandhinagar has also issued circular showing the name of the schools which are entitled to get 100% grant from the very first year. However, the respondent No.2 has not allowed the petitioner to fill up the posts of teachers, junior clerks and peon for which N.O.C. has been granted by that officer on 11-10-1991. Hence, the petitioner filed the second petition being special civil application No.3598/92.

5. In this petition, prayer has been made by the petitioner for issuance of a writ of mandamus or a writ in the nature of mandamus or any appropriate writ, direction or order, quashing and setting aside the action of the respondent in not allowing the petitioner-trust to fill the post in the petitioner-trust-school as per NOC dated 11-10-1991 and to further quash and set aside the action of the respondents in not sanctioning and paying the grant to the petitioner-trust. Prayer has also been made in this special civil application for grant of interim relief. On 26th May, 1992 notice was given to the respondents and on 4th June, 1992, the matter was admitted and interim relief in terms of para-12(C) has been granted by the Court.

6. In both these special civil applications, none of the respondents have cared to file reply thereto. In the absence of reply to the special civil applications, the factual averments made by the petitioner therein are to be taken to be uncontroverted, meaning thereby, to be correct.

7. Learned counsel for the petitioner states that the petitioner is running the school in pursuance to the order granted by this Court and further he states that the appointment to the posts of teacher, junior clerk and peon have also been made and the respondents have also granted aid to the petitioner and which it is continuously getting every year.

8. Learned counsel for the respondents has not controverted these facts and rightly so.

9. Shri R.N. Shah, learned counsel for the petitioner raised one of the contentions that the order dated 15th November, 1991, has been passed by the State Government without giving any notice and an opportunity of hearing to the petitioner.

10. Ms. Manisha Lavkumar, learned A.G.P. appearing for the respondents contended very fairly that in the absence of reply to the special civil applications by the respondents, she is unable to say anything in respect of this factual aspect.

11. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

12. In para-VII, the petitioner stated that the order passed by the respondent cancelling the order dated 12-8-1991 is made without giving any notice or opportunity of hearing to the petitioner-trust and therefore, it is against the principles of natural justice which requires to be quashed and set aside by the Court only on this ground. I find from para-VI of the special civil application that the petitioner has averred that the order dated 15-11-1991 is passed in violation of principles of natural justice. It is a question of fact whether notice has been given to the petitioner by the State Government before passing of the order or not and when a specific pleading has been made that this order has been passed without giving any notice or opportunity of hearing to the petitioner, for want of reply controverting the same from the side of the respondents, it has to be taken to be correct. Under the order dated 12-8-1991, the State Government in exercise of its power under section 48(1) of the Act, granted permission to the petitioner to start new secondary school and in pursuance to that order of the State Government the consequential order has also been passed by the Gujarat Secondary Education Board, meaning thereby, the petitioner-school has been registered. The petitioner has started the school and also been granted permission for filling up the posts of teachers, junior clerk and peon. It is not the case where I have to decide whether the power of reviewing its own order vests in the State Government under the Act or not. The review of the order of 12-8-1991 made by the State Government results in civil consequences and even if it is taken to be an administrative one, still the principles of natural justice are to be followed by the State Government before passing any adverse order against the petitioner. That

precisely has not been done in the present case and only on this ground, this petition deserves to be allowed and accordingly it is allowed and the order dated 15-11-1991 of the State Government annexure `C' is quashed and set aside. Rule is made absolute in special civil application No.8404/91. No order as to costs.

13. As a result of this decision in the special civil application No.8404/91, the special civil application No.3598/92 has become infructuous. The petitioner is receiving the grant-in-aid in pursuance to the order of this Court granted by way of interim relief and the order of the State Government dated 15-11-1991 has been quashed and set aside, no further consequential order is to be passed by the authority i.e. D.E.O. Accordingly, this special civil application is dismissed as having become infructuous. Rule discharged.

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zgs/-